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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other	)	
Customer Information	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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April 14, 1998

SBC Communications Inc.
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SUMMARY[1]

Many commentors have persuasively demonstrated that carrier use of CPNI, within the circumstances of the total service relationship, is consistent with Congress' direction and with customers' expectations and desires. Allowing customers to restrict all marketing uses of CPNI, even those within the total service relationship, would chill thousands of carriers' customer contact personnel and inhibit their day-to-day servicing of customers' telecommunications-related questions. Customers who wish to be left alone in a marketing sense can simply place themselves on a "do-not-call" or "do-not-mail" list, and doing so would inhibit carriers from using these customers' CPNI as a practical matter. Thus, the Commission should not create a new rule that would allow customers to foreclose all marketing uses of their CPNI.

No safeguards are necessary to ensure compliance with Sections 222(a) and (b). Rather, the complaint process should be utilized as appropriate. In any event, the Commission should specifically reject the notion that it must require network service providers to "wall-off" resale carrier confidential data from retail sales and marketing personnel. This attempt to functionally impose structural separation requirements between wholesale and retail organizations, as well as the imposition of access restrictions, is without legal authority and ill-considered in any event. However, to the extent that any safeguards are adopted, they must be applied to all carriers that resell telecommunications services.

Various commentors' requests for an "interpretation" of Sections 222(a) and (b) should

[1]Abbreviations used in this Summary are referenced within the text.

be rejected, even if they are found to be within the scope of this proceeding (which they are not). Specifically, AICC's attempt to require LECs to restrict its alarm monitoring personnel from accessing CPNI call detail records is both legally flawed and impracticable. Sprint's billing and collections-related requests invite the Commission to trump two separate lawsuits, neither of which has found any Section 222 violation on the facts before the federal district courts in those proceedings. To the extent that the Commission considers Sprint's question at all, it should respect the Section 222-related rulings of Judge Charles Breyer and Judge Sam Sparks in those proceedings.

MCI's PIC-related requests confuse CPNI with carrier proprietary information. A LEC acquires information regarding a subscriber's PIC choice because of its own provision of a service to its end-user customer, not by virtue of its provision of access service to an IXC. Intermedia's "winback"-related requests is confusing in multiple respects and overreaches on the law. In any event, the simple fact that a customer has decided to take its business elsewhere is not CPNI, and no business of which SBC is aware is precluded from using that fact to later contact the customer. SBC believes that it should be permitted to continue to enjoy only the same opportunities afforded any other business, including IXCs.

Finally, foreign storage of or access to CPNI by a carrier and its contractee should not be prohibited. However, parties beyond the carrier and its contractee should not be permitted access to any CPNI stored by that carrier, absent the customer's authorization.

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SBC Communications Inc. ("SBC"), on behalf of itself and each of its subsidiaries, hereby files these reply comments in connection with the Further Notice of Proposed Rulemaking ("FNPRM") issued on February 26, 1998 in this proceeding.

I. THE COMMISSION SHOULD NOT ADOPT A RULE THAT WOULD PERMIT CUSTOMERS TO RESTRICT CARRIER USE OF CPNI FOR ALL MARKETING PURPOSES, INCLUDING THOSE WITHIN THE CUSTOMER-CARRIER "TOTAL SERVICE" RELATIONSHIP.

The record is barren of reasonable support for the notion that customers have a right to deny carrier use of CPNI for all marketing purposes, including those within the customer-carrier "total service" relationship. Instead, many commenters persuasively demonstrate that carrier use of CPNI within the circumstances of the total service relationship is in keeping with Congress' direction, as evidenced in Section 222, and is also consistent with customers' expectations and desires.

Permitting customers to restrict the use of their CPNI for all marketing purposes is not supported by either the language of Section 222 of the Act or the policy enunciated by it.[1] As SBC pointed out, when Congress enacted Section 222, it did so in a balanced way by conferring upon carriers an unconditional right to use, disclose and permit access to CPNI in certain limited instances.[2] The Commission confirmed this to be the case when it stated that "in [S]ection 222 Congress intended neither to allow carriers unlimited use of CPNI for marketing purposes. . . , nor to restrict carrier use of CPNI for marketing purposes altogether."[3] As a result, SBC agrees that "carriers have a statutory right, albeit a limited one, to use CPNI for marketing."[4]

SBC also agrees with the several commenters who point out that if clauses (A) and (B) of Section 222(c)(1) are to be given any meaning, the Commission must conclude that they constitute specific exceptions to the general duties imposed by Section 222(a).[5] Conversely, these specific clauses would be stripped of meaning were the Commission to hold that they are

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[1]AT&T, p. 5; Intermedia, p. 5; MCI, p. 3; USTA, p. 4; Vanguard, p.4.

[2]SBC, pp. 2-5.

[3]CPNI Order, ¶37.

[4]Intermedia, p. 3; see also, Vanguard, p. 2 (opposing creating a right for customers to restrict statutorily permitted uses of CPNI because "Congress did not intend and the statute does not provide for customers to have this right").

[5]Intermedia, pp. 4-5; MCI, pp. 2-3; Sprint PCS, p. 3; Vanguard, p. 3.

subservient to Section 222(a), because "customers would have the absolute right to control access to their CPNI and carriers would have no say in the matter,"[6] contrary to Section 222(c).

Nor is there any consideration, from the customer's perspective, that would warrant allowing customers to restrict all marketing uses of CPNI. As a preliminary matter, SBC demonstrated that the Commission's own Order refuted any reliance upon customers' expectations and desires as a reasonable basis for such a right.[7] Customers expect and want carriers to use the CPNI they have on hand to bring new and innovative services to their attention. Stated another way by the CPUC, the services encompassed within Section 222(c)(1)(A) and (B) are "an integral part of providing telecommunications service, or are necessary to the adequate provision of any category of service to which a customer currently subscribes."[8]

Allowing customers to restrict a carrier's use of CPNI, even for purposes within the customer's current subscription of services, would have a "chilling" effect on the day-to-day work of thousands of customer contact personnel. For example, customer service representatives would be uncertain about whether a customer's question invites a "service" or a "marketing"

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[6]Sprint, p. 3.

[7]SBC, pp. 5-6, citing CPNI Order, ¶54 ("customers expect that carriers with which they maintain an established relationship will use information derived through the course of that relationship to improve the customers's existing service"), and ¶55 (there is "no reason to believe that customers would expect or desire their carrier to maintain internal divisions among the different components of their service") (emphases added).

[8]CPUC, p. 4.

response,[9] and often the two spheres overlap. Customer service representatives' principal mission is to attempt to best meet the customer's described needs -- not to slice and dice those needs into prescribed regulatory categories like "service" versus "marketing."

Moreover, as a practical matter, many customers will not appreciate the consequences of restricting access to their CPNI within the total service relationship. Tens of millions of conversations occur each year between customers and customer contact personnel. Some customers who might restrict all marketing uses of their CPNI may do so under the mistaken impression that the restriction will eliminate telemarketing calls. Instead, restrictions by such customers will simply hinder the carrier's ability to offer services "that may benefit the customer financially and in terms of convenience."[10] They will not prevent marketing solicitations.[11]

The approval process already imposed by the FCC's new CPNI Order will have to account for these and other marketplace realities, and the process of educating customers about the new rights granted them by the Commission will be challenging. The Commission need not

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[9]Sprint PCS, p. 5.

[10]Sprint, p.5.

[11]To the contrary, SBC agrees that widespread CPNI restrictions could lead "to greater telemarketing and sales solicitations because a carrier may simply blanket a geographic area with telemarketing or direct mail solicitations rather than use CPNI to develop a more refined list of attractive candidates for the service being marketed." BellSouth, p. 3, n. 13 (emphasis original). Stated another way in the telemarketing context, "[t]o the extent that carriers are denied the use of CPNI in marketing to their customer base, they may have to make more 'cold calls,' thereby resulting in a greater intrusion on customers' privacy than otherwise would have occurred." MCI, p. 4.

and should not further complicate this process by now cutting into the bone of the total service relationship, thus adding to the potential for misunderstanding and confusion.

Should customers wish to be "left alone" in a marketing sense, there is a direct and responsive answer – to place themselves on "do-not-call" and/or "do-not-mail" lists. These mechanisms adequately protect customers. As BellSouth explains, CPNI of customers who place themselves on such lists is of little value to the carrier because it cannot call or send mail solicitations to these customers in any event.[12] Relying on these mechanisms also avoids the mistaken expectation of customers who may think that restricting their CPNI for all purposes, without more, will prevent unwanted solicitations.[13]

II. REGULATORY SAFEGUARDS TO ENSURE COMPLIANCE WITH SECTIONS 222(a) AND (b) ARE UNNECESSARY AND INAPPROPRIATE.

The Commission has asked "what, if any, safeguards are needed to protect the confidentiality of carrier information."[14] In a related vein, the Commission asked about "what, if any, "enforcement mechanisms" should be adopted to ensure carrier compliance.[15] TRA and Sprint, among others, propose a plethora of safeguards. However, the Commission need not and should not adopt any.[16]

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[12]BellSouth, p. 4.

[13]Bell Atlantic, p. 3.

[14]FNPRM, ¶206.

[15]Id., ¶207.

[16]MCI, p. 7.

As the FNPRM notes, the Commission has sought to streamline and update the formal complaint process in order to promote the policies of the Act.[17] Having done so, the Commission should apply that process to specific disputes that may arise, rather than to now institute safeguards.

Such a course is particularly appropriate here because the FNPRM does not purport to seek comment on any "interpretation" issues that may arise in the future regarding Section 222(a) or (b). Thus, the complaint process is needed to determine whether a violation of law has occurred in the first instance. In short, to the extent any interpretive questions may exist, those questions are beyond the scope of this proceeding, and are uniquely appropriate for assignment to the complaint process as and when they are presented within a specific dispute.

In any event, the Commission should specifically reject the concept that it "must require network service providers to 'wall-off' resale carrier confidential data from retail sales and marketing personnel."[18] SBC has taken many steps to limit a retail service personnel's access to resellers' proprietary information, through a variety of database classifications and restrictions. Any additional requirements of the nature proposed by TRA would inappropriately create structural separation requirements between the "wholesale" and "retail" organizations of an ILEC. Nothing in the Act requires or even contemplates such separation.

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[17]FNPRM, ¶207.

[18]TRA, p.10.

TRA also claims that the Commission should impose access restrictions, stating that the Commission's having declined to impose access restrictions in the CPNI Order is distinguishable in this context.[19] However, TRA wrongly assumes that there will never be a reason for which a network service provider's retail sales and marketing personnel will have a legitimate need to access resale carrier data. To the contrary, there are several reasons why such information, at least at the aggregate level, may be critically necessary.

For example, at least at some level in the management of an ILEC, individuals must plan, implement and monitor the totality of a company's operations so as to discharge their obligations to the Board of Directors and shareholders. These individuals must have authority over both wholesale and retail operations, to ensure meeting facility and other infrastructure requirements exacted by both wholesale (e.g., resale, interconnection) and retail (end-user) service provisioning. They must ensure the overall progress of interconnection operations while also striving to serve retail customers' needs and desires. And, they must report to legislators and regulators on various aspects of the overall business. TRA's proposal does not take these matters of importance into account.

In addition, on a case by case basis, an ILEC should be afforded the equivalent preordering capability that is provided to resellers when placing electronic service requests. Specifically, the Commission has found CPNI to be essential to support movement of an end-user's services from one provider to another. ILEC retail organizations must also be allowed

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[19] Id.

access to this functionality as allowable by law and under the same terms of access afforded by resellers.

III. ANY SAFEGUARDS ADOPTED REGARDING SECTIONS 222(a) OR (b) IN A RESALE CONTEXT ALSO MUST BE APPLIED TO ALL CARRIERS THAT RESELL TELECOMMUNICATIONS SERVICES.

Section 222(a) provides that "[e]very telecommunications carrier has a duty to protect the confidentiality of proprietary information. . . ." Similarly, Section 222(b) applies to "a telecommunications carrier that receives or obtains proprietary information from another carrier. . . ." In its CPNI Order, the Commission rejected claims for "special treatment" from some carriers in connection with its interpretation of Section 222(c)(1), concluding instead that "it is clear that [S]ection 222 applies to all carriers equally and, with few exceptions, does not distinguish among classes of carriers."[20] Sections 222(a) and (b) are no different from Section 222(c)(1) in the respect that each applies to all telecommunications carriers.

Consequently, should <u>any</u> safeguards be adopted, they must be made fully applicable to every facilities-based carrier that resells a telecommunications service, whether the carrier be a LEC or an IXC -- including the safeguards proposed by TRA ("walling-off" carrier data, imposition of "strict liability," monetary sanctions)[21] as well as those proposed by Sprint (training programs, disciplinary processes, and officer certifications).[22] Furthermore, the

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[20]CPNI Order, ¶49.

[21]TRA, p. 10.

[22]Sprint, pp. 6-7.

safeguards should apply whether the resale activity is compelled by law or is engaged in on a voluntary basis. Neither the statute nor the proprietary interests at stake require or support a different result.

IV. VARIOUS COMMENTERS' REQUESTS FOR AN INTERPRETATION OF SECTIONS 222(a) AND (b) ARE BEYOND THE SCOPE OF THE FNPRM AND SHOULD BE REJECTED IF ADDRESSED AT ALL.

As noted above, the only areas explored by the Commission regarding Section 222(a) and (b) have to do with potential safeguards and enforcement mechanisms. However, a few parties attempt to shoehorn unrelated proposals to "interpret" these provisions. For several reasons, none should or need be considered by the Commission.

As a preliminary matter, even TRA, which otherwise advocates a panoply of safeguards, expressly concedes that the duties and obligations imposed by these provisions are "remarkably clear and direct" and that "[l]ittle, if any, 'interpretation' is thus required."[23] As Sections 222(a) and (b) do not need interpretation, there is no reason to engage in interpretation.

Furthermore, even if interpretation of these clear and direct words might become necessary, the need will no doubt arise on the basis of an application of the law to specific facts. In this circumstance, interpretation should await the development of those specific facts, so that the interests of all affected parties can be identified and weighed.

Accordingly, to the extent that there may be disagreements in principle -- to name just two potential scenarios: what specific carrier information is "proprietary?" when might

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[23]TRA, p. iii.

information be proprietary to the carrier alone (thus within Section 222(b)) vs. the end-user (thus within Section 222(c)(1))? -- they are more properly resolved in the context of a complaint. This is particularly true with respect to the various alarm monitoring, billing and collection ("B&C"), PIC and "winback" issues raised by certain commenters. None of these issues is within the scope of the FNPRM, and each could well involve multiple interests (e.g., a consumer end-user, an IXC, and one or more LECs) in a potential myriad of fact patterns. These circumstances militate against resolution in a rulemaking proceeding.

To the extent that the Commission may nevertheless determine to any of these unrelated issues, SBC submits that the suggestions in support of them are without merit.

A. AICC'S Alarm Monitoring-related Request Should Be Denied.

AICC asks the Commission to require LECs to restrict their alarm monitoring personnel from accessing CPNI call detail records of local exchange subscribers.[24] Its arguments in support are wrong in multiple respects, and thus its request should be denied.

First, AICC is wrong on the law stated by Section 275(d) and the Commission's previous interpretation of that provision. Section 275(d) does not state that LECs are "prohibited from accessing alarm monitoring data to market alarm monitoring services."[25] Rather, as AICC elsewhere concedes, LECs are "[prohibited] from using information regarding 'the occurrence or content of calls received by alarm monitoring services' for the purpose of marketing their own

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[24]AICC, p. 2.

[25]Id. (emphasis added).

alarm monitoring service offered by another affiliated or unaffiliated entity."[26] Given that use of such data is proscribed in this context, there would be no foreseeable reason to access it in the same context, and thus there is no need for AICC's proposed rule.

Second, the rule proposed by AICC is overly broad in another respect. The statute does not bar use of all of the information that may appear on call detail records, only that having to do with alarm monitoring data. Thus, AICC requests a rule that would, in compound respects, prohibit conduct not barred by the law.

Third, in its CPNI Order, the Commission expressly declined to require restrictions that would prohibit carrier personnel from accessing CPNI of customers who have not given requisite approval for carrier use of CPNI for marketing purposes.[27] The Commission cited several good reasons for not doing so, and AICC's comments here do not state reasons why the Commission's analysis should not govern alarm data, or even why its members' competitive interests should be regarded as different from (or elevated over) those of consumers. In any event, to the extent that AICC's proposed rule has any merit, AICC should file a Petition for Reconsideration of the CPNI Order.

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[26]Id., p. 3, n. 6, quoting, Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information: Use of Data Regarding Alarm Monitoring Service Providers, Report and Order, 11 FCC Rcd 9553 (1996) ("Alarm Monitoring Order"), ¶9 (emphasis added). More to the point, the Alarm Monitoring Order reminded that "Section 275(d) only restricts use of information (i.e., CPNI) related to the occurrence of calls received by alarm monitoring service providers for the purpose of marketing such services." Id., ¶11.

[27]CPNI Order, ¶¶195-196.

Fourth, to the extent that a given alarm call is even reflected on a customer's toll statement,[28] there is no feasible way for SBC's BOCs to strip out alarm data from the call detail its thousands of representatives access daily in order to answer customers' questions. Thus, AICC's proposed rule would force a representative (who may be able to offer alarm monitoring services) to face a blank screen when the customer simply inquires about a call appearing on his or her bill that the customer does not remember making.

Finally, customer representatives that may lawfully market home security services along with other services, under an approved Computer III Comparably Efficient Interconnection ("CEI") Plan, may not be denied that integrated authority merely because they have access to the customer's records. SBC notes that AICC filed no Petition for Reconsideration regarding the Commission's grant of Southwestern Bell Telephone Company's Security Services CEI Plan, including the CPNI non-structural safeguard provision of that Plan.

Finally, the formal complaint process is sufficient to redress any perceived wrongs that may in fact materialize (and in fact, to SBC's knowledge, no such wrongs have occurred in the two years since the Act was passed). To the extent that any customers of AICC's membership determine to switch alarm monitoring providers, the reason can easily be established by AICC's simply asking its customer why he or she decided to move to another provider. Similarly, any

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[28]Such a call to an alarm monitoring company may well be either a local or a toll-free call that would not appear on the customers' call detail records in any event and, in fact, that is typically the case (so that the customer does not incur toll charges). Thus, no access restrictions should be considered until AICC demonstrates in what circumstances such numbers might even appear on call detail records.

unusual movement of accounts to a provider whose services may be marketed by a BOC can be easily detected. In either case, the circumstances may certainly be inquired into at that time.

B. Sprint's B&C-related Request Should Be Denied.

Sprint agrees that certain customer billing information constitutes CPNI within Section 222(c)(1), and that the end user can authorize the disclosure of such information to any person designated by the customer. However, it requests that the Commission declare that the use of IXC billing databases by a LEC for purposes other than billing violates Section 222(a).[29] Sprint's argument is little more than an attempt to have the Commission act as a Court of Appeals in two separate lawsuits, neither of which has found a Section 222 violation, and should be rejected.

The first suit (and the only one identified by Sprint) is pending in federal court for the Northern District of California wherein Sprint, AT&T and MCI are the plaintiffs and Pacific Bell is the defendant (No. C96-01691). Plaintiffs brought several claims: breach of contract, breach of the covenant of good faith and fair dealing, misappropriation of trade secrets, and violation of Section 222 of the Act. On April 6, 1998, the Honorable Charles Breyer granted plaintiffs' request for injunctive relief. However, for purposes of the Commission's FNPRM proceeding, it is important to note that the Court found for plaintiffs only on their claim for misappropriation of trade secrets, concluding that Pacific Bell's actions did not constitute a violation of the Telecommunications Act.

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[29]Sprint, pp. 8-9. Also, MCI vaguely claims that "billing information" is encompassed by Section 222(a). MCI, p. 8.

The previous suit was filed in the Western District of Texas by AT&T against Southwestern Bell Telephone Company (No. A 96-CA-397 SS), and contained factual allegations similar to those in the suit now pending in California. AT&T sought relief on theories of violations of Section 222 of the Act, breach of contract, misappropriation of trade secrets, unjust enrichment, breach of fiduciary duty, and civil conspiracy. On October 4, 1996, the Honorable Sam Sparks denied AT&T's motion for preliminary injunction, finding with respect to each claim that AT&T could not establish a substantial likelihood of prevailing on the merits of the claim. AT&T next appealed from that Order, but later dismissed its appeal.

SBC attaches copies of these two orders, as Attachments A and B hereto. These orders clearly suggest why any Commission interpretation of the provisions of Section 222(a) and (b), in the absence of a proper factual record, would be hazardous at best. No prospective rule can account for the myriad of fact patterns that may arise, a tri-partite CPNI relationship (i.e., end-user, LEC, IXC), potential arguments that multiple statutory provisions may apply to the facts and to the relationship of the parties involved, and the presence of specific B&C contractual provisions.

In any case, both Judge Breyer and Judge Sparks ruled that no violation of Section 222 had occurred. The Commission should respect those rulings, even if it might be inclined to consider Sprint's request describing only one of the pertinent actions. Sprint's arguments otherwise do not account for any of these significant considerations. Its request should thus be denied.

C. MCI'S PIC-related Request Should Be Denied.

MCI claims that a subscriber's PIC choice, and information revealing that choice, should be viewed as carrier proprietary information under Section 222(b).[30] MCI's claim is fatally flawed and must be rejected. The customer's PIC choice is CPNI, not carrier proprietary information.

First, a customer's PIC choice reflects the customer's "use of a telecommunications service subscribed to by [a] customer" within Section 222(f)(1)(A) and also is "information contained in the [customers'] bills pertaining to telephone exchange service or telephone toll service" within Section 222(f)(1)(B). As a consequence, the information cannot be regarded as proprietary to MCI or any other IXC.

Second, it is not true, as MCI claims, that "the LEC learns this information only because the IXC depends on it for interconnection to the customer," or that the LEC acquires such information "by virtue of its provision of access service to the customer's chosen [IXC]."[31] Rather, the LEC learns of a customer's PIC choice by virtue of its provision of access service to the end-user customer.

For example, Southwestern Bell Telephone Company's Missouri access service tariff (and likely other state tariffs) provides that "a customer or agent [of the customer]" may

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[30]MCI, p. 11.

[31]Id.

designate a primary IXC for all of its lines or a different IXC for each.[32] Furthermore, the end-user customer typically incurs a tariffed charge to change his or her PIC choice. While it is true that a LEC may receive instructions from an IXC to change the customer's PIC choice, that does not alter the fact that the customer is being provided an access service by the LEC in the course of that transaction.[33] In short, there is no basis for concluding that the LEC is providing any service to anyone in this context other than to the end-user customer.

The same analysis controls as to a LEC's disclosure of a customer's "local PIC choice" to a CLEC. In the circumstances where such disclosure would be appropriate, it would be based on the end-user customer's authorization for the CLEC's provision of an access service to that customer. It is not, as MCI claims, because the CLEC is engaged in "the provision of access service to the selected IXC."[34]

For these reasons, MCI's arguments are erroneous. Its request that the Commission rule that a customer's PIC choice is encompassed within Section 222(b) must be denied.

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[32]Southwestern Bell Telephone Company, Missouri Access Services Tariff, Section 13.3.3, Sheets 8 - 9.04, et seq.

[33]Thus, "[t]he Telephone Company will make changes in the customer's or agent's primary [IXC] assignment pursuant to an [IXC] provided list of customers or agents accepted by the Telephone Company under a Limited Blanket Agency Agreement. Should customer or agent choice discrepancies occur, and the [IXC] be unable to produce proper agency authorization, the [IXC] rather than the customer or agent will be billed for any post-conversion Easy Access Dialing charge(s) that may apply for making the change and/or restoring the customer's or agent's original [IXC] assignment." Id., Section 13.3.3.D.1.i, at Sheet 9.01.

[34]MCI, p. 13.

D. Intermedia's "Winback"-related Request Should Be Denied.

Intermedia asks the Commission to take steps to ensure that ILECs will not use "competitor CPNI" to attempt to "winback" former ILEC customers.[35] For several reasons, the Commission should not act on this request.

First, Section 222(b) is clear that to the extent that the information about which Intermedia speaks might constitute "proprietary information from another carrier," an ILEC's (or even a LEC's or CLEC's) obligation is clear. No explication is needed. However, to the extent that the information about which Intermedia is concerned may constitute end-user customer's CPNI under Section 222(f)(1), any use, access to or disclosure of such information is controlled by Section 222(c)(1). In such an instance, Section 222(b) is not applicable at all.

Second, to the extent that Intermedia seeks to use this FNPRM proceeding as an avenue to further address the circumstances under which a LEC may use the "CPNI of its former customer" to "winback" the customer,[36] its recourse is to file a Petition for Clarification or Reconsideration of the Commission's CPNI Order. The CPNI Order specifically addressed the subject of a LEC's using CPNI of a former customer.[37] The instant proceeding is limited to Sections 222(a) and (b), and indeed, only whether "safeguards" or "enforcement mechanisms" are needed.

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[35]Intermedia, p. 8.

[36]Id., p. 9.

[37]CPNI Order, ¶85.

Third, to the extent that Intermedia invites a Commission determination that CPNI encompasses the fact that a particular customer has chosen to terminate its relationship with one LEC and the generic reason for that termination (e.g., so as to initiate a relationship with another), no such determination is permissible. This information is not CPNI because it is not "information that relates to. . . a telecommunications service subscribed to" by the former customer of the LEC.[38] Indeed, like the statute, the Commission's CPNI Order emphasizes the importance of a "subscription" -- the Order specifically noted Congress' having described CPNI in terms of a telecommunications service "subscribed to by the customer."[39]

Similarly, these two items of information are not proprietary to a subsequent service provider. They are clearly distinguishable from, for example, the services that another company may later provide the customer. Accordingly, it is not within the purview of Section 222(a) or (b).

Some element of reason in light of universally-accepted business practice also must be considered here. No business, whether a bakery, auto parts supplier or telephone company should be precluded from simply contacting its former customer in order to compete on the merits with that customer's new provider. Similarly, no business of which SBC is aware is precluded from using the simple fact that a customer has decided to take its business elsewhere as an opportunity to later contact that customer. To do otherwise would completely foreclose

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[38]47 U.S.C. §222(f)(1)(A).

[39]CPNI Order, ¶38.

that business from speaking with that customer, a consequence that itself is anticompetitive. SBC does not ask for special treatment in this regard -- we are all reminded of flyers, brochures, mailers and other "winback" materials from, for example, virtually every IXC which loses a customer to another IXC. SBC asks only that it continue to be permitted to enjoy the same opportunities afforded any other business.

For these reasons, the Commission need not and should not adopt Intermedia's views. Rather, to the extent the Commission might address them, it should conclude that SBC's views state a more reasonable and appropriate approach under Section 222 of the Act and in view of other considerations.

V. CERTAIN TYPES OF FOREIGN STORAGE OF OR ACCESS TO CPNI SHOULD NOT BE PROHIBITED.

SBC has reviewed the comments of Ameritech regarding the matter of foreign storage of and foreign-based access to domestic CPNI. Like Ameritech, SBC has in place contracts for information systems development and production support in foreign countries. As a consequence, certain domestic customers' CPNI may be incidentally accessed by employees of SBC's contractees. Also like Ameritech, SBC (along with its contractees) has implemented several sophisticated security-related safeguards to eliminate any prospect of unwanted access to its information and systems by others. Given these circumstances, SBC should not be foreclosed from the option of storing or gaining access to CPNI in foreign countries, nor should it be required to secure customers' written consent as a condition to doing so.

On the other hand, that is not to say that there are no risks associated with foreign storage

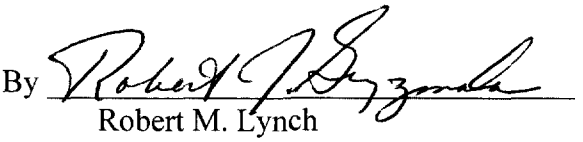
of or access to its domestic customers' CPNI. In particular, special care must be taken to ensure against unwanted access to such information. Thus, SBC believes that no firm beyond itself and its contractees should be able to obtain access to CPNI stored by SBC -- regardless of where located -- absent the customer's authorization.

VI. CONCLUSION

SBC respectfully submits that the Commission adopt its views as stated herein.

Respectfully submitted,

SBC COMMUNICATIONS INC.

By 

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Attachment A

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

AT&T COMMUNICATIONS, et al.

Plaintiffs,

v.

PACIFIC BELL, et al.

Defendants.

No. C96-01691 CRB

ORDER

Before the Court are the parties' cross-motions for summary judgment. Plaintiffs, AT&T Communications of California, Inc., MCI Telecommunications Corporation, and Sprint Communications Company L.P., have brought claims alleging breach of contract, breach of the covenant of good faith and fair dealing, misappropriation of trade secrets, and violation of the Telecommunications Act of 1996. In their summary judgment motion, plaintiffs request both injunctive relief and monetary damages for the use of their trade secrets. Defendants, Pacific Bell and related entities, have filed a counter-motion seeking summary adjudication on those same claims insofar as they pertain to the Pacific Bell Awards Program. Having carefully read and considered the papers submitted by the parties, and having heard oral argument on Friday, February 27, 1998, it is hereby ordered that the Court GRANTS plaintiffs' motion and request for injunctive relief as to their claim for misappropriation of trade secrets. Further, the Court finds that Pacific Bell's actions did not constitute breach of contract, breach of the covenant of good faith and fair dealing, or a violation of the Telecommunications Act. Accordingly, it is hereby